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Office of The Ombudsman, Hong Kong

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Direct Investigation Report

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Leisure and Cultural Services Department's Arrangements for Depositing Layout Plans of Public Pleasure Grounds in Land Registry

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Executive Summary
Direct Investigation Report

Leisure and Cultural Services Department's Arrangements for Depositing Layout Plans of Public Pleasure Grounds in Land Registry

Introduction

The Leisure and Cultural Services Department ("LCSD") is managing nearly 1,800 public pleasure grounds ("PPGs") including parks, children's playgrounds, and beaches. In March 2019, there were media reports about LCSD's failure to deposit the layout plans of some 450[1] PPGs in the Land Registry ("LR") in accordance with the Public Health and Municipal Services Ordinance ("PHMSO"). As a result, the legal basis of enforcement actions by its staff and the Tobacco and Alcohol Control Office under the Department of Health in the PPGs concerned was questioned.

2. LCSD completed the procedures for depositing layout plans of all PPGs in about 10 months after the problem had come to its attention. Nevertheless, The Ombudsman initiated a direct investigation into LCSD's arrangements for depositing layout plans of PPGs in LR to avoid recurrence of similar cases.

Our Findings

3. Our investigation has identified four inadequacies in LCSD's depositing of layout plans of PPGs.

Before the Discovery of Failure to Deposit Layout Plans of Some PPGs

[1] LCSD subsequently confirmed that the number of PPGs involved was 583, which accounted for 33% of the total number of PPGs.

(1) Failing to Draw up Clear Guidelines for Meeting Statutory Requirements

4. The English version of PHMSO was compiled in 1960, and there is no clear indication that layout plans of PPGs shall be deposited in LR. Nevertheless, it is stipulated in the Chinese version of PHMSO, which was compiled in 1996, that a layout plan showing the boundary of a PPG shall be deposited in LR. According to LCSD, it had all along acted upon the English version of PHMSO. However, our investigation revealed that the deposit procedures had been completed for more than half of the PPGs in accordance with the requirements in the Chinese version. That means throughout the years, LCSD had neither noticed nor paid attention to the inconsistent practice regarding deposits of layout plans of PPGs. Moreover, it had not drawn up any clear instructions or guidelines on meeting the relevant requirements under PHMSO. As a result, each District Leisure Services Office ("DLSO") under LCSD has its own way of dealing with the work.

(2) Failing to Actively Monitor Progress of Deposit Procedures and Keep Records

5. In the past, LCSD had not set up any centralised database to record, organise and manage information about depositing layout plans of PPGs. Neither had the LCSD headquarters kept any records. When the deposit procedures were completed, the layout plan would only be kept by the DLSO concerned, which was not required to report its work progress to the headquarters. Obviously, LCSD had never actively monitored the deposit procedures (including amending of layout plans).

(3) Ineffective Communication and Lack of Collaboration with Lands Department

6. The work of depositing layout plans has been handled by LCSD and the Lands Department ("LandsD") at the level of DLSOs and District Survey Offices respectively, and there has been no

established mechanism for communication between the district offices and headquarters of the two departments, or regular reviews regarding the progress or workflows. That has resulted in ineffective monitoring of the progress, and failure to detect promptly cases of delay or omission.

After Reviewing the Situation and Establishing Deposit Procedures

(4) Failing to Fill "Enforcement Vacuum" after Opening PPGs for Use

7. LCSD would announce in the gazette new PPGs and then open them for public use, and inform LandsD to prepare and deposit their layout plans. As the procedures for preparing and depositing layout plans usually took six months to one year, in the past, the layout plans of most PPGs were not yet deposited when the venues were open to public. In other words, there might be a one-year or even longer "enforcement vacuum" in newly-opened PPGs.

8. After cases of omission were found, LCSD proposed improvement measures, including deliberation with LandsD to speed up deposits of layout plans, and revision of internal guidelines to set out the procedures for preparing and depositing layout plans of new PPGs, requiring staff to complete the gazetting and deposit procedures. However, there is no definite instructions or specific measures in the revised guidelines to ensure that a layout plan will have been deposited in LR when a PPG is open to public or a venue officially taken over from other departments becomes a PPG under PHMSO.

9. Hence, we consider that LCSD should further review the current procedures and arrangements for gazetting and opening of PPGs for public use, and introduce effective measures such as exploring the feasibility of depositing a provisional plan showing boundary of the major area of a PPG, so as to avoid any

"enforcement vacuum" that may affect the operation and management of PPGs.

Recommendations

10. In view of the above, The Ombudsman has recommended that LCSD:

(1) draw up clear guidelines requiring staff to prepare a layout plan for every PPG and then deposit it in LR as required by law;

(2) strictly require DLSOs to report to the headquarters regularly the progress of deposits of layout plans to avoid omissions;

(3) review the current procedures and arrangements for gazetting and opening of PPGs for public use to eliminate any "enforcement vacuum";

(4) explore the feasibility of simplifying layout plans and depositing in LR a provisional plan which shows mainly the boundary of the major area of a new PPG to meet the requirements under PHMSO;

(5) establish a mechanism to facilitate effective communication with LandsD on depositing of layout plans for better collaboration;

(6) set up as soon as practicable a central database on layout plans of PPGs for proper management of records; and

(7) expedite the study of keeping electronic records of layout plans and setting up a computerised system to handle and monitor the work.

Office of The Ombudsman
December 2019

1

INTRODUCTION

BACKGROUND

1.1 The Leisure and Cultural Services Department ("LCSD") managed nearly 1,800 public pleasure grounds ("PPGs"), including parks, children's playgrounds, sitting-out areas, sports centres and beaches, as at September 2019.

1.2 In March 2019, there were media reports about LCSD's failure to deposit the layout plans of some 450 PPGs in the Land Registry ("LR") in accordance with the Public Health and Municipal Services Ordinance (Cap.132) ("PHMSO"). As a result, the legal basis for enforcement actions by its staff and the Tobacco and Alcohol Control Office ("TACO") under the Department of Health in the PPGs concerned was questioned, and the two departments had to suspend their enforcement actions in those venues from February 2019.

1.3 After preliminary inquiry, The Ombudsman decided to initiate a direct investigation pursuant to section 7(1)(a)(ii) of The Ombudsman Ordinance (Cap. 397) on 2 August 2019 to examine LCSD's arrangements for depositing layout plans of PPGs in LR.

SCOPE OF INVESTIGATION

1.4 The scope of this investigation covers:

- LCSD's workflow of preparing and depositing layout

plans of PPGs;

- LCSD's communication and collaboration with the Lands Department ("LandsD") in preparing and depositing layout plans; and

- any areas for improvement.

PROCESS OF INVESTIGATION

1.5 In this direct investigation, this Office has mainly:

- examined the statutory requirements for preparing and depositing layout plans of PPGs;

- examined LCSD's workflow of depositing layout plans and its monitoring measures;

- understood LandsD's procedures for preparing and depositing layout plans; and

- invited members of the public to give their views.

1.6 On 16 October 2019, we issued the draft investigation report to LCSD and LandsD for comments. This final report, incorporating the comments from them, was completed on 10 December 2019. The full report has been uploaded to this Office's website (www.ombudsman.hk).

2

STATUTORY REQUIREMENTS AND PREVIOUS ARRANGEMENTS FOR DEPOSITING LAYOUT PLANS OF PPGs

DEFINITION OF PPGs

2.1 It is stated in the Interpretation in section 2(1), Part I of PHMSO that "*public pleasure ground means any place for the time being specified in the Fourth Schedule and delineated on any plan thereof which may, for the time being, have been deposited in accordance with the provisions of section 106(5), and, in the case of a beach, includes the sea and the sea-bed within the limits of the beach*." Section 106(5) provides that "*Every plan prepared in accordance with the provisions of... shall be deposited in the Land Registry.*"

2.2 In other words, a venue falls within the definition of a PPG under PHMSO only if it is specified in the Fourth Schedule, and a

layout plan showing its boundary has been deposited in LR as required by law.

ROLE OF LCSD

2.3 Under section 106(1) and (6) of PHMSO, LCSD, as the Authority in these two subsections, may from time to time, by order set aside places for use as PPGs (see **para. 2.6** for details), and amend or add to or delete from the Fourth Schedule. Section 106(2) provides that the places specified in the Fourth Schedule shall be deemed to have been set aside for use as PPGs.

ROLE OF LandsD

2.4 Under section 106(3) and (4) of PHMSO, LandsD, as the Authority in these two subsections, shall as soon as practicable prepare a plan of every PPG. Where the boundaries of any PPG are so varied, or such pleasure ground is otherwise so changed, as to render any plan deposited no longer accurate, LandsD shall withdraw the plan so deposited and shall as soon as practicable prepare an amended plan or a new plan of such pleasure ground. Section 106(5) provides that every plan prepared in accordance with the aforesaid subsections shall be deposited in LR.

2.5 For provisions of section 106 of PHMSO, please see **Annex**.

PREVIOUS ARRANGEMENTS FOR PREPARING AND DEPOSITING LAYOUT PLANS OF PPGs

2.6 LCSD explained that when the works programme of a PPG was near completion, it would set aside the venue for use as a PPG and initiate the procedures to amend the Fourth Schedule (see **para. 2.3**) (which included publication of the new PPG in the gazette and submission to the Legislative Council for consideration) in accordance with section 106 of PHMSO. Generally speaking,

subsequent to the gazettal of the new PPG (i.e. adding it to the Fourth Schedule), the District Leisure Services Office ("DLSO") concerned would inform the responsible District Survey Office ("DSO") under the Survey and Mapping Office of LandsD to prepare the layout plan, and open the PPG for public use as soon as practicable. Hence, the layout plans of most PPGs were not yet deposited in LR when the venues were opened to public. According to LCSD, it usually took six months to one year to prepare and deposit a layout plan.

2.7 LCSD added that very often PPGs taken over from other Government departments would be opened for public use upon completion of the gazettal procedures. Hence, in some cases the PPG was in use before its layout plan was deposited in LR.

2.8 LandsD explained that it would, at LCSD's request, prepare and deposit layout plans of PPGs according to the procedures specified in PHMSO. Normally, on receiving LCSD's request, LandsD would conduct a site survey and prepare a draft plan for LCSD to confirm the boundary of the venue. LandsD and LCSD had to liaise with stakeholders in the adjoining lots to discuss and confirm the boundary of the PPG and the departments' responsibilities. After verifying details of the layout plan, LandsD would deposit it in LR, and submit two original copies and two duplicates to the DLSO concerned for record.

2.9 LandsD emphasised that while the DSO concerned would commence and complete the preparation and deposit of a layout plan as soon as practicable, the work progress and time required depended on the workload, priority and manpower at the time, as well as the complexity of the layout plan, which might involve such factors as the type, scale, departments' responsibilities, architectural design and works progress of the PPG. Where the workload and manpower allowed, the DSO concerned would need about six months to complete the procedures. For complicated cases, it might take more time.

2.10 Furthermore, LCSD admitted that the original copies and duplicates of the layout plans of PPGs (see **para. 2.8**) had all along been in the possession of the DLSOs concerned. The LCSD headquarters did not keep any copy of those layout plans or any list of PPGs whose layout plan had been deposited in LR.

3

DISCOVREY OF FAILURE TO DEPOSIT LAYOUT PLANS AND DEPARTMENTS' FOLLOW-UP ACTIONS

3.1 LCSD's failure to deposit the layout plans of some PPGs in LR in accordance with PHMSO had led to suspension of enforcement actions by its staff and TACO in those venues from February 2019 (see **para. 1.2**). In this regard, LCSD explained to this Office its enforcement power and responsibilities in PPGs, how the failure was discovered and why the layout plans were not deposited, as well as the Department's follow-up actions.

ENFORCEMENT POWER AND RESPONSIBILITIES IN PPGs

3.2 The enforcement power and responsibilities of LCSD and TACO staff in PPGs are listed in **Table 1**.

Table 1: Enforcement power and responsibilities of LCSD and TACO in PPGs

Relevant Legislation	Violations	Enforcement Authority	
		LCSD	TACO
Smoking (Public Health) Ordinance (Cap. 371)	Smoking	✓	✓
Fixed Penalty (Smoking Offences) Ordinance (Cap. 600)	Smoking	✓	✓
Pleasure Grounds Regulation (Cap. 132BC)	Cycling, plucking flowers or grass, feeding birds, hawking or selling commodities/articles, etc.*	✓	
Bathing Beaches Regulation (Cap. 132E)	Hawking or selling commodities/articles, lighting a fire, etc.#	✓	

* Provisions relating to violations of the Pleasure Grounds Regulation are listed in section 30.

\# Provisions relating to violations of the Bathing Beaches Regulation are listed in section 16.

HOW FAILURE TO DEPOSIT LAYOUT PLANS WAS DISCOVERED

3.3 There was a joint operation for tobacco control by LCSD and TACO in August 2018. During the prosecution process, LCSD examined its records in response to enquiry from TACO, and found

only draft plans of the venues in question and that the procedures for depositing layout plans in LR were not yet completed. LCSD then sought advice from the Department of Justice (DOJ).

3.4 DOJ pointed out that the wordings used for the definition of PPGs in the Chinese and English versions of section 2(1) of PHMSO are somewhat different, thereby resulting in a discrepancy in their meaning as to whether the layout plan must be deposited in LR for the venue to be qualified as a PPG where relevant Government departments can take enforcement actions pursuant to PHMSO.

3.5 The English version of PHMSO was compiled in 1960 and the relevant provision reads,

> *"'public pleasure ground' means any place for the time being specified in the Fourth Schedule and delineated on any plan thereof which **may**, for the time being, have been deposited in accordance with the provisions of section 106(5), and, in the case of a beach, includes the sea and the sea-bed within the limits of the beach"*

There is no clear indication that a layout plan shall be deposited in LR if the venue is to be used as a PPG.

3.6 The Chinese version of PHMSO was compiled in 1996 and the relevant provision reads,

> *"'□□□□□□' (public pleasure ground) □□□ 4 □□□□□□□□□□□□□□□□□□□□□(...any plan thereof which for the time being, **have been deposited**...)□□□ 106(5)□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□□"*

Section 106(5) of PHMSO stipulates that every layout plan of PPGs shall be deposited in LR (see **Annex**).

3.7 LCSD explained that although section 10B of the Interpretation and General Clauses Ordinance (Cap. 1) provides that the Chinese and English language texts shall be equally

authentic, LCSD, after taking into account the legal advice sought and other relevant factors, considered it more prudent to adopt the more restrictive interpretation, i.e. the requirement in the Chinese version that every layout plan of PPBs shall be deposited in LR.

3.8 As stated in **paragraph 2.10** above, the LCSD headquarters had not kept any list of PPG whose layout plan was in LR or any of those layout plans. Subsequently, LCSD collected relevant information from DLSOs between September and December 2018, and found some 450 PPGs whose layout plan had not been deposited in LR. After repeated checking with LandsD and LR the relevant records, LCSD finally confirmed that as at 1 August 2018, there were 583 PPGs (33% of the total number of PPGs managed by LCSD) whose layout plan was not yet deposited at the time they were opened for public use. Among which, one-third were opened after the establishment of LCSD on 1 January 2000 (see **Table 2**).

Table 2: The number of PPGs under LCSD already opened with deposit procedures yet to be completed as at 1 August 2018

PPGs which were opened before 1 January 2000	PPGs which were opened on or after 1 January 2000
389	194

WHY LAYOUT PLANS WERE NOT DEPOSITED

3.9 As pointed out in **paragraph 3.7** above, LCSD explained that both the Chinese and English versions of PHMSO have legal effect, but the Government had all along acted upon the English version. Since its establishment in 2000, LCSD had followed suit and acted upon the English version as the legal basis for its enforcement actions (see **para. 3.5**). There was no strict

requirement that the layout plan of a PPG shall be deposited in LR. In the past, LCSD had only drawn up guidelines and procedures for gazettal of PPGs, but those guidelines did not cover preparation and deposit of layout plans. Nevertheless, LCSD would promptly proceed with the gazetting procedures upon completion of a new PPG so that the venue could be opened for public use. LCSD would then inform LandsD to prepare the layout plan (see **para. 2.6**).

3.10 As regards its failure to deposit layout plans of PPGs which have been in use for years, LCSD further explained the reasons for delay or omission:

(1) In preparing a layout plan, LCSD and LandsD had to discuss and confirm with other Government departments concerned and stakeholders in the same lot and adjoining lots, the boundary of the PPG and the departments' responsibilities until a consensus could be reached. It might require more time to prepare the layout plan in case of changes in the venue boundary caused by such factors as tree-planting, road diversion or infrastructure works.

(2) Some DLSOs failed to follow up on the preparation of layout plans in a systematic manner, thus causing omission.

(3) When LCSD was set up in 2000, it took over the PPGs which were previously managed by the Urban Council and Regional Council. It was rather difficult to check whether the layout plans of those PPGs had been deposited because some of the PPGs had been in use for years, and no organised records were available.

3.11 After LCSD had become aware of the problem, LandsD also reviewed those cases involving delay or omission and concluded that there were two major reasons:

(1) In some very old cases, LandsD did not deposit the layout plan in LR because it had not received timely request from LCSD, or the Survey and Mapping Office had not completed the procedures to confirm the layout plan with the DLSO concerned after finishing the draft plan.

(2) Some cases were omitted due to the absence of a comprehensive mechanism to follow up on and monitor the progress of preparation and deposit of layout plans, the lack of follow-up enquiry by LCSD and ineffective communication between the two departments.

FOLLOW-UP ACTIONS BY DEPARTMENTS

Followed up on Cases Where Layout Plan Was Not Yet Deposited

3.12 After LCSD had decided to act upon the requirement in the Chinese version of PHMSO that every layout plan of PPGs shall be deposited in LR (see **para. 3.7**), the Department considered it appropriate to suspend enforcement actions in PPGs whose deposit

procedures were yet to be completed until all layout plans were properly deposited.

3.13 In February 2019, LCSD notified TACO and all DLSOs by email that enforcement actions in the aforesaid PPGs be suspended. The staff concerned then acted accordingly.

3.14 Information provided by LCSD reveals that between 2013 and 31 July 2018, LCSD and TACO had issued prosecution summons and fixed penalty notices to members of the public in the aforesaid PPGs. Relevant figures provided by LCSD are in **Table 3** below.

Table 3: Figures about prosecutions instituted or summons issued by LCSD and TACO between 2013 and 31 July 2018 in PPGs whose layout plan was not yet deposited

Relevant Legislation	**Number of cases where enforcement actions were taken**	
	LCSD	**TACO**
Smoking (Public Health) Ordinance (Cap. 371)	--	9 cases
Fixed Penalty (Smoking Offences) Ordinance (Cap. 600)	17 cases	495 cases
Pleasure Grounds Regulation (Cap. 132BC)	15 cases	(N/A)
Bathing Beaches Regulation (Cap. 132E)	--	(N/A)

3.15 Subsequent to the suspension of enforcement actions, LCSD, LandsD and LR verified the information of the aforesaid PPGs and then completed the procedures for depositing layout plans. Priority was given to venues with high utilisation and enforcement needs.

3.16 By June 2019, LCSD and LandsD generally completed the procedures for depositing layout plans of all except for four PPGs due to exceptional circumstances:

- A venue was no longer used as a PPG, and LCSD later completed the legislative procedures in mid-2019 to remove it from the Fourth Schedule of PHMSO;

- Three venues have been closed for construction works (where LandsD's surveying had to wait until the completion of works. Deposits of the layout plans are expected to be completed in the fourth quarter of 2019).

3.17 According to LCSD, enforcement actions in PPGs have been resumed since early July 2019.

Improvement Measures Proposed for Depositing Layout Plans and Keeping Records

3.18 LCSD and LandsD worked together to review the procedures for preparing and depositing layout plans of PPGs. LCSD proposed the following improvement measures:

(1) To revise internal guidelines to require DLSOs to inform LandsD promptly to prepare layout plans, and update the Land-based Venues Unit at the headquarters on the progress. The Unit would monitor cases to identify delays and instruct the DLSOs concerned to take follow-up action;

(2) Both the headquarters and DLSOs concerned to keep one original and one duplicate of the layout plans after LandsD has completed the deposit procedures;

(3) To consider keeping layout plans in electronic form and uploading a full list of gazetted PPGs and their layout plans to the intranet for internal reference;

(4) To explore the use of computerised system to manage the workflows of gazetting and preparing layout plans so that omission could be avoided;

(5) To strengthen communication and collaboration with LandsD and establish a mechanism for cooperation in preparing and depositing layout plans in LR, which include providing LandsD with a list of PPGs to be opened for use in the coming year and updating LandsD of the works progress in a timely manner so that LandsD could arrange manpower for the procedures.

3.19 LandsD also agreed to strengthen the communication and collaboration with LCSD to ensure that layout plans of newly-opened PPGs would be deposited in LR in a timely manner. LandsD proposed the following improvement measures:

(1) To maintain close contact with LCSD, after receiving at the beginning of a year the list of PPGs to be opened, on the work progress, boundary, gazettal and opening date of those venues, so that the Survey and Mapping Office could arrange staff to prepare layout plans promptly. With all information ready, the procedures could possibly be completed within six months;

(2) The Survey and Mapping Office to set a time frame for LCSD and other departments concerned to confirm the draft plan so that the procedures could be completed in a timely manner.

4

OUR COMMENTS AND RECOMMENDATIONS

4.1 It has been more than 19 years since LCSD took over the PPGs listed in PHMSO in 2000. Yet, the statutory procedures for depositing the layout plan of a few hundred of those PPGs remained incomplete, causing the legal basis for enforcement actions by the departments concerned to be questioned. For about six months, enforcement actions had to be suspended, thus undermining the effective management of those venues, which was very unsatisfactory. After the problem had come to its attention, LCSD remedied the situation by completing the deposit procedures for all PPGs in about 10 months, and then resumed enforcement actions in those venues. Nevertheless, we consider it necessary to investigate the reasons for delay and omission, and introduce specific and effective measures to avoid recurrence.

4.2 LCSD is the authority managing the PPGs and taking enforcement actions in those venues under the relevant ordinances. During our investigation, LCSD confirmed that in principle LandsD acts on LCSD's request to commence the procedures for preparing and depositing a layout plan. Hence, the main target of this direct investigation is LCSD.

4.3 Our investigation has identified inadequacies in LCSD's depositing of layout plans of PPGs prior to the omissions being discovered. More importantly, we have found that even after LCSD's review and introduction of improvement and monitoring

measures, it is still possible that the deposit procedures are not completed before a PPG is opened to public.

4.4 Overall, this Office considers that there are the following inadequacies on the part of LCSD.

BEFORE THE DISCOVERY OF FAILURE TO DEPOSIT LAYOUT PLANS OF SOME PPGs

Failing to Draw up Clear Guidelines for Meeting Statutory Requirements

4.5 LCSD admitted that it had not drawn up any clear instructions or guidelines for meeting the requirements for depositing layout plans of PPGs under PHMSO. According to LCSD, it was mainly because it had acted upon the English version of PHMSO, which does not require the layout plan of a PPG to be deposited in LR (see **para. 3.5**).

4.6 Nevertheless, this Office notices that the deposit procedures for more than half of the PPGs were completed as required by law even though LCSD had all along acted upon the English version of PHMSO. That means throughout the years, LCSD has neither noticed nor paid attention to the inconsistent practice regarding deposit of layout plans. While the procedures were established according to the provisions of PHMSO (see **paras. 3.5 and 3.6**), LCSD had allowed DLSOs to adopt their own practice.

4.7 After conducting a review, LCSD decided to adopt a more restrictive interpretation of PHMSO (i.e. the layout plans shall be deposited in LR) for future cases. In our view, when LCSD revised the relevant guidelines (see **para. 3.18(1)**), it should have set out clearly the requirements for depositing layout plans and drawn up a clear workflow, procedures and time frames to ensure that deposit of layout plans would be followed up and completed in a timely manner.

Failing to Actively Monitor Progress of Deposit Procedures and Keep Records

4.8 In the past, LCSD had not set up any centralised database to record, organise and manage information about depositing layout plans of PPGs. When the deposit procedures were completed, the layout plan would only be kept by the DLSO concerned. The LCSD headquarters did not keep any copy (see **para. 2.10**) or require the DLSO concerned to report the work progress. Obviously, LCSD had never monitored the deposit procedures (including amending of layout plans). LCSD also admitted that some DLSOs failed to follow up rigorously on the preparation of layout plans, and that was one of the reasons why the deposit procedures for some PPGs were not yet completed despite that those venues had been in use for many years (**para. 3.10(2)**).

4.9 In our view, although LandsD is responsible for preparing and revising layout plans under PHMSO (see **para. 2.4**), LCSD is the authority planning for and managing the PPGs and therefore, has the duty to coordinate proactively the relevant work, and introduce effective measures to monitor rigorously the progress as well as to keep a full list and records of layout plans. Meanwhile, for better management of PPGs, LCSD should also review regularly the deposit procedures to check the effectiveness of the guidelines and procedures, and whether any layout plan needs revision or amendment.

Ineffective Communication and Lack of Collaboration with LandsD

4.10 The work of depositing layout plans has been handled by LCSD and LandsD at the level of DLSOs and DSOs respectively (see **para. 2.6**), and there has been no regular reviews on the work or communication between the district offices and headquarters of the two departments. That has resulted in ineffective monitoring of the progress, and failure to detect promptly cases of delay or omission.

4.11 We consider that there should be a mechanism for calling regular working-level meetings, assigning staff members as the contact points, etc. to facilitate regular communication between LCSD and LandsD on preparing and depositing layout plans. Such mechanism will strengthen collaboration between the two departments and enable them to review regularly the procedures and measures for depositing layout plans, as well as the progress. Hence, the enforcement power of LCSD and the Department of Health in the venues would not be undermined because of incomplete deposit procedures or inaccuracy in the layout plans.

AFTER REVIEWING THE SITUATION AND ESTABLISHING DEPOSIT PROCEDURES

Failing to Fill "Enforcement Vacuum" after Opening of PPGs

4.12 As stated in **paragraph 3.9** above, LCSD would announce in the gazette new PPGs as soon as practicable and then open them for public use, and inform LandsD to prepare and deposit their layout plans. Under such workflow, the layout plans of most PPGs were not yet deposited when the venues were opened to public. As the procedures for preparing and depositing layout plans usually took six months to one year (see **paras. 2.6 and 2.9**), there might be a one-year or even longer "enforcement vacuum" in the newly-opened PPGs.

4.13 Information provided by LCSD shows that the Department started collecting and reviewing records of PPGs in the third quarter of 2018 to identify venues whose layout plans were not yet deposited (see **para. 3.8**). It took LCSD about 10 months to complete the deposit procedures of all PPGs in June 2019 (see **para. 3.16**). Meanwhile, LCSD opened five PPGs for public use, but their layout plans were not yet deposited in LR by the time they were opened. Please see **Table 4** for details.

Table 4: **Dates on which the five PPGs were opened and their**

layout plans were deposited between August 2018 and June 2019

	(1) Opening	(2) Deposit of Layout Plan	Period between (1) and (2)
Venue 1	11 October 2018	30 May 2019	Over 7.5 months
Venue 2	10 November 2018	25 April 2019	Over 5.5 months
Venue 3	24 November 2018	29 April 2019	Over 5 months
Venue 4	14 January 2019	9 April 2019	Nearly 3 months
Venue 5	1 March 2019	29 April 2019	Nearly 2 months

According to LCSD, as the preparation of layout plans for those PPGs were done before the revision of the relevant guidelines, there was still an "enforcement vacuum" in those PPGs due to incomplete deposit procedures.

4.14 After cases of omission were found, LCSD proposed improvement measures, including deliberation with LandsD to speed up the process, and revision of internal guidelines in August 2019 to set out the procedures for preparing and depositing layout plans of new PPGs, requiring staff to complete the gazetting and deposit procedures (see **paras. 3.18 and 3.19**). However, there is no instructions or specific measures to ensure that a layout plan will have been deposited in LR when a PPG is open to public or a venue officially taken over from other departments becomes a PPG under PHMSO (see **para. 2.7**).

4.15 We appreciate the good intention of LCSD to open the new PPGs for public use as soon as practicable. However, if there are PPGs still not subject to the relevant legislation after opening for a

period of time, it will affect the operation and management of those venues. Though the problem may be temporary, it is still possible for the enforcement actions to be challenged or overruled.

4.16 In view of the above, we consider it necessary for LCSD to eliminate the "enforcement vacuum". That means LCSD should ensure the layout plan of a PPG has already been deposited in LR when the venue is opened to public. One way to achieve this is to delay opening the PPG until the procedures are completed. However, it might not be a desirable option for the sake of utilising resources or meeting public expectation.

4.17 Hence, we consider that LCSD should further review the current procedures and arrangements for gazetting and opening of PPGs for public use, and introduce effective measures to avoid such "enforcement vacuum".

4.18 As the venues taken over from other departments have already been opened for public use (see **para. 2.7**), we consider that before taking over any such venues, LCSD should allow adequate time for LandsD to prepare and deposit layout plans to ensure the validity of enforcement power. LCSD should also consider LandsD's work progress when deciding the schedule to take over those venues. That would avoid disturbances to public use of those venues and prevent the legal basis of enforcement actions by frontline staff from being questioned.

4.19 For new PPGs, we understand that the preparation of layout plan may take time and it depends on the progress of works programme. It may also involve the management of various facilities or equipment. If LCSD and LandsD find it impossible to complete the preparation of layout plans in advance or expedite the process, they should explore other alternatives. One of the proposed options would be to prepare and deposit a provisional plan which shows mainly the boundary of the major area of the venue, while leaving out the areas or boundaries that need to be discussed and confirmed with stakeholders in the adjoining lots. When the official and complete layout plan is ready, they can revise

the one deposited in LR.

4.20 We have noticed that in the definition of PPGs in section 2(1) of PHMSO, it only requires the layout plan"*... for the time being specified in the Fourth Schedule and delineated on any plan thereof which for the time being, have been deposited...*"(see **para. 3.6**). Apart from delineating on the plan the venue, neither in the relevant provision nor section 106 of PHMSO (see **Annex**) requires the layout plan to show details of the topography or other facilities. In our view, LCSD can explore the feasibility of simplifying the layout plans and seek legal advice and LandsD's professional advice on surveying as to whether the enforcement requirement under PHMSO can be met by depositing a provisional plan, which shows the boundary of the major area of a newly-completed PPG. It is hoped that a PPG can be opened to public as soon as possible, and at the same time preparation of its layout plan can be sped up to ensure effective management and enforcement actions.

4.21 We received a positive response from LCSD regarding our comments. LCSD noted that in future it would inform LandsD at least 12 months before the estimated date of opening of a new PPG so that LandsD can start preparing the layout plan early. Besides, LCSD will further review and revise the internal guidelines on opening of PPGs, requiring all DLSOs to verify if the layout plan of a PPG has been deposited in LR before its opening to public. In case of exceptional circumstances where a detailed and complete layout plan is not ready before the PPG is opened, both LCSD and LandsD have agreed that a provisional plan which shows the boundary of the major area of a PPG can be deposited in LR, and then revised when an official and complete layout plan is available. LCSD is of the view that implementation of this new arrangements can eliminate any possible "enforcement vacuum".

CONCLUSION

4.22 The problem discussed above was mainly attributed to the undesirable practice starting from a few decades ago. LCSD

introduced remedial measures soon after the problem had been discovered. Apart from the immediate actions to deposit all the missing layout plans, LCSD reviewed and revised the guidelines to step up monitoring. Nevertheless, in order to resolve completely the problem of “enforcement vacuum” in PPGs, incomplete deposit procedures or omissions of deposit of layout plans in LR should be forbidden. We are pleased to note that LCSD will further revise the relevant guidelines to give clear instructions to staff so that layout plans of new PPGs will be deposited in LR as required by law in a timely manner.

RECOMMENDATIONS

4.23 In view of the findings of this direct investigation, The Ombudsman has recommended that LCSD:

(1) issue clear guidelines requiring staff to prepare a layout plan for every PPG and then deposit it in LR as required by law, as well as draw up a clear workflow, procedures and time frames to ensure timely follow-up action and deposit of the layout plan (see **para. 4.7**);

(2) step up monitoring of deposit of layout plans to strictly require DLSOs to report to the headquarters regularly the progress to avoid omissions (see **para. 4.9**);

(3) review the current procedures and arrangements for gazetting and opening PPGs for public use to eliminate any "enforcement vacuum" (including cases where the PPGs are taken over from other departments and longer time is required for preparing layout plans) (see **paras. 4.16, 4.17, 4.18 and 4.21**);

(4) explore the feasibility of simplifying the layout plans and depositing in LR a provisional plan which shows mainly the boundary of the major area of a new PPG to meet the requirements under PHMSO (see **paras. 4.19, 4.20 and 4.21**);

(5) establish a mechanism to facilitate effective communication with LandsD for better collaboration (see **para. 4.11**);

(6) set up as soon as practicable a central database on layout plans of PPGs for proper keeping of all versions of layout plans and records of those deposited in LR (see **para. 3.18(2) and (3)**); and

(7) expedite the study of keeping electronic records of

layout plans and setting up a computerised system to handle and monitor the work so that delay and omission due to human error can be avoided (see **paras. 3.18(3), 3.18(4) and 4.9**).

ACKNOWLEDGEMENTS

4.24 The Ombudsman thanks LCSD and LandsD for their full cooperation during the course of this investigation.

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Annex

Annex

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Cap. 132 Public Health and Municipal Services Ordinance

Section 106 — Provision of public pleasure grounds

(1) The Authority may, from time to time, by order set aside places for use as public pleasure grounds, and may by the same or any subsequent order specify the purpose for which such grounds or any part thereof shall be used.

(2) The places specified in the Fourth Schedule shall be deemed to have been set aside under the provisions of subsection (1) for use as public pleasure grounds.

(3) The Authority shall, as soon as practicable, prepare a plan of every public pleasure ground.

(4) Where the boundaries of any public pleasure ground are so varied, or such pleasure ground is otherwise so changed, as to render any plan deposited in accordance with the provisions of subsection (5) no longer accurate, the Authority shall withdraw the plan so deposited and shall, as soon as practicable, prepare an amended plan or a new plan of such pleasure ground.

(5) Every plan prepared in accordance with the provisions of subsection (3) or (4) shall be deposited in the Land Registry.
(Amended 8 of 1993 s. 2; 20 of 2002 s. 5)

(6) The Authority may by order amend, or add to or delete from, the

Fourth Schedule.
(Amended 9 of 1976 s. 10)